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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MELODY L. COCHRAN,

Plaintiff and Appellant,

v.

OCWEN LOAN SERVICING, LLC,

Defendant and Respondent.

B293626

Los Angeles County
Super. Ct. No. BC565336

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Law Office of Louis P. Dell and Louis P. Dell; Miller & Miller Attorneys at Law and Robert Miller, for Plaintiff and Appellant.

Houser & Allison, Robert W. Norman and Emilie K. Edling, for Defendant and Respondent.

Melody L. Cochran appeals the trial court’s order granting a motion for judgment on the pleadings by Ocwen Loan Servicing, LLC. We affirm.

This case is about who owns 1526 North Avenue 50 in Los Angeles, California. This appeal is the seventh in this fight. (*Cochran v. Bennett* (Sept. 18, 2009, B210747) [nonpub. opn.]; *Cochran v. Starr* (Dec. 8, 2009, B213445) [nonpub. opn.]; *Cochran v. Greenpoint Mortgage Funding, Inc.* (Mar. 9, 2010, B214890) [nonpub. opn.]; *Cochran v. Delonay* (July 16, 2010, B213445) [nonpub. opn.]; *Cochran v. Bank of New York Mellon* (Nov. 9, 2017, B278268) [nonpub. opn.]; *Cochran v. Bank of New York Mellon Trust Co., N.A.* (Apr. 5, 2019, B291949) [nonpub. opn.].) It is nearly identical to the sixth. (*Cochran v. Bank of New York Mellon Trust Co., N.A.* (Apr. 5, 2019, B291949) [nonpub. opn.].)

Ocwen serviced the two deeds of trust that Bank of New York Mellon holds on the property. Bank and Ocwen want to foreclose on it. The sixth appeal arose from the Bank’s motion for judgment on the pleadings. (*Cochran v. Bank of New York Mellon Trust Co., N.A.* (Apr. 5, 2019, B291949) [nonpub. opn.].)

This appeal arises from Ocwen’s motion, and turns on the same issues.

On this seventh appeal, we repeat our explanation from the sixth appeal that the fifth appeal determined whatever title Cochran may hold is subject to the Bank’s liens. (*Cochran v. Bank of New York Mellon* (Nov. 9, 2017, B278268) [nonpub. opn.] at p. 9 [“The effect of the judgment was also unambiguous—Cochran sat on her rights; so while [a different claimant’s] title is void and [Cochran] might still hold some title to the property, her title remains subject to [Bank’s predecessor-in-interest’s] liens.”].) So Cochran loses to the Bank and its mortgage servicer Ocwen.

Cochran claims she pleaded a valid claim for possession under Civil Code section 1006. That argument fails for reasons already explained in the sixth appeal. (*Cochran v. Bank of New York Mellon Trust Co., N.A.* (Apr. 5, 2019, B291949) [nonpub. opn.].)

Cochran also attacks the procedure the trial court followed. She claims “Ocwen Satisfied None of the Statutory Requirements” of a motion for judgment on the pleadings. In fact, Ocwen satisfied all the requirements.

First, as Cochran admits, Ocwen filed an answer before filing its motion, as required by Code of Civil Procedure section 438, subdivision (f)(2).

Second, Ocwen appears to have met and conferred with Cochran, and filed a declaration on the meet and confer, as required by Code of Civil Procedure section 439, subdivision (a).

Third, Ocwen did not violate Code of Civil Procedure section 438, which prohibits motions for judgment on the pleadings that are based on the same grounds as an overruled demurrer, unless “there has been a material change in applicable case law or statute since the ruling on the demurrer.” (Code Civ. Proc., § 438, subd. (g)(1).) Ocwen’s motion was based in part on arguments it raised in an earlier demurrer. But it did not previously demur on the ground Cochran failed to plead sufficient facts to allege title by prescription, as required by Civil Code section 1006. A motion for judgment on the pleadings may be made where it is based on different grounds than an earlier demurrer. (Code Civ. Proc., § 438, subd. (g)(2).)

Fourth, Cochran cites without argument Code of Civil Procedure section 439, subdivision (b). Because Cochran has not explained why Code of Civil Procedure section 439, subdivision

(b) compels reversal, or even why the section is relevant, she has waived any potential arguments based on it. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852; see also Cal. Rules of Court, rule 8.204(a)(1)(B) [“Each brief must: . . . support each point by argument . . .”].)

Fifth, Cochran argues the Ocwen’s motion is a prohibited motion for reconsideration that fails to meet the statutory requirements of Code of Civil Procedure section 1008. In making this argument, she again ignores that Ocwen makes arguments that were not raised in its earlier demurrer.

We do not reach the issue of whether a common law, non-statutory motion for judgment on the pleadings is permissible, because Ocwen’s motion can be sustained within the rubric of Code of Civil Procedure sections 438 and 439. (See *CPF Agency Corp. v. R&S Towing* (2005) 132 Cal.App.4th 1014, 1020–1021, quoting *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193 [“ ‘ “The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words.” . . . The principle that a trial court may consider a motion regardless of the label placed on it by a party is consistent with the court’s inherent authority to manage and control its docket.’ ”].)

Page 12 of Cochran’s opening brief in this seventh appeal repeats the content of page 12 of her opening brief in the sixth appeal; she argues this court’s earlier opinion held “a factual determination of the [possession cause of action] was required” We repeat: “We held Cochran’s deposition testimony created a factual conflict that cannot be resolved at the demurrer stage, and thus did not constitute sufficient grounds to grant a demurrer. That did nothing to reduce the possibility that a

judgment on the pleadings could be granted on other grounds.”
(*Cochran v. Bank of New York Mellon Trust Co., N.A.* (Apr. 5,
2019, B291949) [nonpub. opn.])

DISPOSITION

The judgment is affirmed. Costs to Ocwen.

WILEY, J.

WE CONCUR:

GRIMES, Acting P. J.

STRATTON, J.